

SENATE, No. 2401

[Senate, April 27, 2010 – New draft reported from the committee on [Ways and Means](#) for Senate, No. 1619.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT RELATIVE TO THE ESTATE OF HOMESTEAD.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter 188 and

inserting in place thereof the following chapter:-

CHAPTER 188

HOMESTEADS

Section 1. (a) For the purposes of this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Declared homestead exemption”, \$500,000; provided, however, that: (1) with respect to a home owned by joint tenants or tenants by the entirety who are benefited by an estate of homestead declared pursuant to section 1B, the declared homestead exemption shall remain

whole and unallocated, provided that the owners together shall not be entitled to a declared homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to said section 1B shall be the product of: (i) \$500,000; and (ii) the co-tenant's or trust beneficiary's percentage ownership interest; (3) except as provided in clause (4), each person who owns a home and who is benefited by an estate of homestead declared pursuant to section 1A shall be entitled to the declared homestead exemption without reduction, proration or allocation among other owners of the home; and (4) separate estates of homestead may be declared pursuant to sections 1A and 1B on the same home, and in such event: (i) if the home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 1B shall be calculated in the manner provided in clause (2), and the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 1A shall be calculated in the manner provided in clause (3); or (ii) if the home is owned by joint tenants or tenants by the entirety, the declared homestead exemption for the owners together shall be the sum of \$500,000 multiplied by the number of declarations recorded pursuant to section 1A, plus \$250,000.00; provided, however, that the homestead exemption under this subclause shall remain whole and unallocated among the owners; and provided further, that no owner who declares a homestead, acting individually, shall be entitled to claim an exemption of more than \$500,000; and provided further, the calculation of the amount of homestead exemption available to an owner shall not sever a joint tenancy or tenancy by the entirety.

“Disabled person”, an individual who has a medically-determinable, permanent physical or mental impairment that would meet the disability requirements for Supplemental Security Income under 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording.

“Elderly person”, an individual 62 years of age or older.

“Family” and “Family members”, (1) married individuals, both of whom own a home, and any minor child as defined herein; (2) a married individual who owns a home, a non-titled spouse of the married individual and any minor child as defined herein; or (3) an unmarried individual who owns a home and any minor child.

“Home”, the aggregate of: (1) any of the following: (i) a single-family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (ii) a 2 to 4-family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a condominium, as those terms are defined in section 1 of chapter 183A, that is used for residential purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B, 157B, 180 or otherwise; (2) the sale proceeds as provided in clause (1) of section 8; and (3) the proceeds of any policy of insurance insuring the home against fire or other casualty loss as provided in clause (2) of subsection (a) of said section 8.

“Minor child”, a person aged 21 and under, who is the natural or adopted child of an owner or owner’s spouse entitled to the benefits of this statute, notwithstanding any provision of law to the contrary.

“Mortgage”, an instrument granting a security interest in a manufactured home or cooperative housing unit.

Mortgagee, the secured party in a mortgage instrument.

“Owner”, a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate holder or holder of a beneficial interest in a trust.

“Principal residence”, the home where an owner, and the owner’s family if applicable, resides or intends to reside as the primary dwelling; provided, however, that no person shall hold concurrent rights in more than 1 principal residence.

“Record”, “recording” or “recorded”, the act of recording in the registry of deeds or the registry district of the land court for the county or district wherein the home lies, except that with respect to a manufactured home located on registered land, recording in the registry of deeds shall be sufficient.

Section 1A. (a) The estate of homestead of each owner who is an elderly or disabled person, regardless of marital status, shall be protected under this section against attachment, seizure, execution on judgment and levy, except as provided in clause (1) of subsection (b) of section 1B, to the extent of the declared homestead exemption provided that the declaration of homestead for such elderly or disabled person that complies with section 2 has been recorded and provided that such occupy or intend to occupy the home as his principal residence.

An owner of a home who qualifies under this section shall, upon recording of an elderly or disabled person's declaration of homestead protection, be eligible for protection of such ownership interest to the extent of the declared homestead exemption as set forth in clauses (3) and (4) of the definition of “declared homestead exemption” in section 1 regardless of whether such declaration is recorded individually or jointly with another.

(b) Except as provided in the following paragraph, each elderly or disabled person's estate of homestead shall terminate upon: (i) the sale or transfer of that person’s ownership

78 interest in the home, except where the elderly or disabled person is also the transferee of all or a
79 portion of the transferred interest; (ii) the recorded release of that person's homestead estate;
80 (iii) the subsequent declaration of an estate of homestead on other property; (iv) the
81 abandonment of the home as the principal residence by the person; (v) upon the death of the
82 person; or (vi) with respect to a home owned in trust, the execution of a deed or recorded release
83 by the trustees.

84 In the event that an owner records a declaration under this section and then conveys to or
85 is survived by a spouse who does not have the benefit of an estate of homestead created under
86 this section or section 1B and the spouse occupies or intends to occupy the home as the
87 principal residence, then the spouse shall be deemed, as of the time such spouse acquired title,
88 to have the benefit of the declaration previously recorded to the same extent as if such
89 declaration had been recorded under section 1B, until the spouse becomes eligible for and
90 records a declaration of homestead pursuant to this section.

91 (c) No declaration of homestead created under section 1A shall terminate the existing
92 homestead rights of a non-titled spouse or any minor children.

93 (d) Nothing in this section shall prohibit an elderly or disabled person from declaring or
94 continuing a homestead pursuant to section 1B, but no person shall concurrently hold rights
95 under both this section and section 1B.

96 (e) A deed, release or mortgage containing a statement of the marital status of a grantor
97 may be relied upon by a good faith purchaser for value. As to acts undertaken in good faith
98 reliance on such deed, release or mortgage, an affidavit executed and acknowledged by the
99 grantor, releaser or mortgagor under penalty of perjury stating that, at the time of delivery of the
100 deed, release or mortgage, the affiant had no spouse then entitled to claim the benefit of an

existing estate of homestead, shall be conclusive proof of the nonexistence of such benefit at that time. The affidavit may be recorded in connection with the execution and delivery of a deed, release or mortgage and shall be accepted in all registries of deeds and registry districts of the land court. The subsequent residency or renewal of residency in the home by a spouse of the grantor, releaser or mortgagor shall not defeat the priority of any mortgage, release or conveyance accepted in reliance on such affidavit.

Section 1B (a) An estate of homestead to the extent of \$500,000 in a home may be acquired by 1 or more owners who occupy or intend to occupy the home as a principal residence. The estate of homestead shall be created by a written declaration prepared, executed and recorded in accordance with section 2. A homestead declaration shall benefit each owner signing the declaration and the owner's family members who occupy or intend to occupy the home as their principal residence. The homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy the home as their principal residence.

(b) An estate of homestead shall be exempt from the laws of conveyance, descent, devise, attachment, seizure, execution on judgment, levy and sale for payment of debts or legacies except as follows:

- (1) for the payment of federal, state and local taxes, assessments, claims and liens;
- (2) for a lien on the home recorded prior to the creation of the estate of homestead;
- (3) for a mortgage on the home as provided in sections 5 and 6;
- (4) upon an order by a court that a spouse, former spouse or parent shall pay a certain amount weekly or otherwise for the support of a spouse, former spouse or minor children;

(5) where buildings on land not owned by the owner of the estate of homestead are attached, levied upon or sold for the ground rent of the lot upon which they are situated; and

(6) upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

Section 2. (a) A declaration of homestead shall be in writing, signed and acknowledged under penalty of perjury by each owner to be benefited by the homestead, except as provided in clause (4), shall be recorded and shall comply with the following:

(1) each owner to be benefited by the homestead, and the owner's non-titled spouse, if any, shall be identified;

(2) the declaration shall state that each person named therein occupies or intends to occupy the home as their principal residence.

(3) if the home is co-owned by a married couple, whether in their names only or as co-tenants with others, and the home is the principal residence or is intended to be the principal residence of both spouses, a declaration under section 1B shall be executed by both spouses; and

(4) if the home is owned in trust, only the trustee shall execute the declaration.

(b) A declaration of homestead under section 1A shall, in addition to the requirements of subsection (a), include the following:

(1) a statement that the owner to be benefited is an elderly person or a disabled person; and

(2) with respect to a declaration of homestead benefiting a disabled person: (i) an original or certified copy of a disability award letter issued to the person by the United

145 States Social Security Administration; or (ii) a letter signed by a physician registered with
146 the board of registration in medicine certifying that the person meets the disability
147 requirements stated in 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in
148 effect at the time of recording; provided, however, that the award letter or physician's
149 letter shall be recorded with the declaration.

150 (c) A declaration of homestead shall not be created within a deed or other instrument
151 vesting title in the owner.

152 (d) The statement of principal residence required in clause (2) of subsection (a) shall be
153 binding upon an identified owner, including an owner who is a beneficiary of a trust, but may
154 be overcome by an interested third party upon presentation of clear and convincing evidence to
155 the contrary. In the event that spouses occupy or intend to occupy separate homes and valid
156 declarations are recorded with respect to each, then both estates of homestead together shall not
157 exceed the declared homestead exemption.

158 The estate of homestead of an individual who records a declaration of homestead under
159 section 1B and who subsequently marries shall automatically be deemed to benefit that
160 individual's spouse. Any subsequent recording of a declaration of homestead benefiting: (i) a
161 family member identified on a prior declaration on the same home; or (ii) the spouse of that
162 person, without an intervening release, shall relate back to the filing date of the earliest recorded
163 declaration, but the provisions of this chapter pursuant to which the later recorded declaration
164 was made shall control the rights of a person identified in the later declaration.

165 Section 3. In a case where a complaint for divorce, separate support, guardianship or
166 conservatorship has been filed in the probate court by or against a person entitled to the benefit
167 of an estate of homestead, the spouse and minor children of that person may use, occupy and

168 enjoy the homestead estate until ordered otherwise by the probate court. The recording of an
169 order of the probate court, together with the description of the homestead estate, shall prevent a
170 beneficiary of the homestead estate from disposing of the estate until such time as the probate
171 court revokes the judgment.

172 Section 4. The estate of homestead existing at the death or divorce of a person holding a
173 homestead under section 1B shall continue for the benefit of the surviving spouse or the former
174 spouse and minor children who occupy or intend to occupy the home as their principal
175 residence. The estate of homestead of the surviving spouse or former spouse and minor
176 children shall continue notwithstanding the remarriage of the surviving or former spouse. The
177 right, title and interest of the deceased in the home, except the estate of homestead thus
178 continued, shall be subject to the laws relating to devise, descent and sale for the payment of
179 debts and legacies.

180 Section 5. No estate of homestead shall affect a mortgage, lien or other encumbrance
181 previously existing, except as provided in this chapter.

182 Section 6. An estate of homestead shall be subordinate to a mortgage encumbering the
183 home executed by all the owners of the home. The subordination shall not require the signature
184 of a spouse who is not an owner. A mortgage executed by fewer than all of the owners of a
185 home that is subject to an estate of homestead shall be superior only to the homestead estate of
186 the owners who are parties to the mortgage and their non-titled spouses and minor children, if
187 any.

188 No statement that a homestead estate shall be subordinate to the mortgage shall be
189 required in the mortgage instrument and nothing contained in a mortgage or any document
190 executed in connection with the mortgage shall affect or be construed to create, modify or

191 terminate a homestead estate, other than to subordinate it to the mortgage as aforesaid.

192 A mortgage lender shall not require or record a release of homestead in connection with the
193 making and recording of a mortgage.

194 Section 7. (a) An estate of homestead created under section 1B may be terminated by
195 any of the following methods:

196 (1) a deed to a non-family member conveying the home, signed by the owner and a
197 non-owner spouse or former spouse residing in the home as a principal residence as of
198 the date of the deed;

199 (2) a recorded release of the estate of homestead, duly signed and acknowledged by
200 the owner and a non-owner spouse or former spouse residing in the home as a principal
201 residence as of the date of the release;

202 (3) the abandonment of the home as the principal residence by the owner, the owner's
203 spouse, former spouse or minor children, except that such abandonment shall terminate
204 only the rights of the persons who have abandoned the home; provided, however, that no
205 person in military service as defined in 50 U.S.C. appendix, section 511 shall be deemed
206 to have abandoned the home due to such military service; or

207 (4) in the case of a home the title to which is held in trust, by either: (i) the execution
208 of a deed or a release of homestead by the trustee; or (ii) action of a beneficial owner
209 identified in the declaration, who is not a minor child, taken in the same manner as
210 provided in clauses (2) and (3).

211 (b) No deed between spouses or former spouses or co-owners who individually or jointly
212 hold an estate of homestead under section 1B and no deed between a trustee and a trust
213 beneficiary or between a life tenant and a remainderman shall terminate the homestead unless

each co-owner, spouse, former spouse, trustee or trust beneficiary entitled to the benefit of the homestead has executed an express release thereof pursuant to clause (2) or clause (4).

(c) Except for the subordination provided in section 6, nothing contained in a mortgage or any document executed in connection therewith shall terminate or otherwise affect a homestead estate.

(d) A deed reserving an estate of homestead shall convey, according to its terms, any title or interest in the property beyond the estate of homestead.

Section 8. (a) If a home that is subject to an estate of homestead is sold, whether voluntarily or involuntarily, taken or damaged by fire or other casualty, then the proceeds received on account of any such sale, taking or damage shall be entitled to the protection of this chapter during the following periods:

(1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period ending on the date on which the person benefited by the homestead either acquires another home the person intends to occupy as a principal residence or 1 year after the date on which the sale or taking occurred, whichever first occurs; and

(2) in the event of a fire or other casualty, for a period ending on: (i) the date upon which the reconstruction or repair to the home is completed or the date on which the person benefited by the homestead acquires another home to occupy as a principal residence; or (ii) 2 years after the date of the fire or other casualty, whichever first occurs.

(b) For the purposes of this section, occupancy of a trailer, manufactured home or other temporary housing shall not establish principal residency in a reconstructed or replacement home.

Section 9. If the property of a debtor is assigned under the laws relative to insolvent debtors and debtor claims and it appears to the court wherein the insolvency proceedings are pending that the debtor is entitled to hold a part thereof as a homestead and that the property in which estate of homestead exists is of greater value than the declared homestead exemption, the court shall cause the property to be appraised by 3 disinterested appraisers, 1 of whom shall be appointed by the insolvent debtor, 1 of whom shall be appointed by the assignee and 1 of whom shall be appointed by the court; provided, however, that if either the assignee or insolvent debtor fails to make such appointment, the court shall appoint an appraiser for the assignee or the insolvent debtor. The appraisers shall be sworn faithfully and impartially to appraise the property and shall appraise and set off an estate of homestead therein to the insolvent debtor in the manner prescribed in section 18 of chapter 236 for a judgment debtor and the residue shall vest in and be disposed of by the assignee in the same manner as property which is not exempt by law from levy on execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in insolvency, as are allowed to appraisers of land seized upon execution.

SECTION 2. Chapter 236 of the General Laws is hereby amended by striking out section 18, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 18. If a judgment creditor requires an execution to be levied on property which is claimed by the debtor to be as a homestead exempt from such levy and if the officer holding such execution is of the opinion that the premises are of greater value than an amount equal to the declared homestead exemption, as defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the manner provided by section 6. If in the judgment of the appraisers the premises are of greater value than the amount of the declared homestead

259 exemption, the appraisers shall set off to the judgment debtor so much of the premises,
260 including the dwelling house, in whole or in part, as shall appear to them to be of the value of
261 the amount of the declared homestead exemption and the residue of the property shall be levied
262 upon and disposed of in like manner as land not exempt from levy on execution; provided,
263 however, that if the property levied on is subject to a mortgage, it may be set off or sold subject
264 to the mortgage and to the estate of homestead in the same manner as land subject to a mortgage
265 only.

266 **SECTION 3.** All existing estates of homestead in effect on the effective date of this act
267 shall continue in full force and effect notwithstanding the repeal of any law under which they
268 were created and shall be afforded all of the protections granted to them under this act.